Supreme Court of Vermont.

HOWARD v. WITTERS.

A chattel mortgage, properly executed to secure a *bona fide* debt, takes precedence of a previous real estate mortgage, in which personalty is also mentioned and attempted to be mortgaged, without complying with the statutory requisites.

Where the possession of personal property is given to the buyer, and no reservation of title is made, there is no valid vendor's lien.

Exceptions from Chittenden County Court.

Trover for taking live stock and farming tools. At the trial, September Term, 1887, the court directed a verdict for the defendant.

The Revised Laws of Vermont, chapter 99 (edition of 1880, page 405), provide—

SEC. 1965. All personal property shall be subject to mortgage, agreeably to the provisions of this act.

SEC. 1966. A mortgage of such personal property shall not be valid against any person except the mortgagor, his executors and administrators, unless the possession of the property is delivered to, and retained by, the mortgagee, or the mortgage is recorded in the office of the clerk of the town in which the mortgagor resides at the time of making the same, or if he resides out of the State, in the town in which the property is situated.

SEC. 1967. Each mortgagor and mortgagee shall make and subscribe an affidavit in substance as follows:

"We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose, and that the same is a just debt, due, and owing from the mortgagor to the mortgagee."

Which affidavit, with the certificate of the oath, signed by the authority administering the same, shall be appended to such mortgage, and recorded therewith.

SEC. 1970. Town clerks shall procure and keep a book of records for mortgages of personal property; they shall record therein any mortgage, transfer or discharge, and give a certified copy thereof when requested, on payment of their fees at the rate of ten cents a folio; shall certify the time when the same is received and recorded, and keep an alphabetical index of mortgagors and mortgagees, which record and index shall be open to public inspection.

SEC. 1972. A mortgagor of personal property shall not sell nor pledge such property mortgaged by him, without the consent of the mortgagee in writing upon the back of the mortgage and on the margin of the record thereof, in the office where such mortgage is recorded.

SEC. 1973. A mortgagor shall not execute a second or subsequent mortgage of personal property while the same is subject to a previously existing mortgage given

by such mortgagor, unless the fact of the existence of such previous mortgage is set forth in the subsequent mortgage.

And in relation to liens, chapter 100 provides—

SEC. 1992. No lien, reserved on personal property sold conditionally and passing into the hands of the conditional purchaser, shall be valid against attaching creditors, or subsequent purchasers without notice, unless the vendor of such property takes a written memorandum, signed by the purchaser, witnessing such lien, and the sum due thereon, and cause it to be recorded in the town clerk's office of the town where the purchaser of such property resides, if he resides in the State, otherwise in the town clerk's office of the town where the vendor resides, within thirty days after such property is delivered.

H. N. Deavitt and *O. P. Ray*, for plaintiff.

H. E. Powell, *W. L. Burnap* and *C. W. Witters*, for defendant.

POWERS, J. September 25, 1888. Lafave and wife conveyed a farm, together with the live stock and farming tools in question, to Chevalier, on the 20th day of May, 1882. This conveyance was by a warranty deed, and the personal property passed absolutely. To secure the purchase money, Chevalier, on the same day, executed an ordinary real estate mortgage to the plaintiff, to secure $1,000 advanced by the plaintiff to Mrs. Lafave for Chevalier, and another mortgage to Mrs. Lafave, to secure the balance of the purchase money, and in both said mortgages, attempted to mortgage said personal property. In December, 1883, Chevalier, who had been in possession of the farm and personal property since May 20, 1882, executed to the defendant a chattel mortgage of the personal property purchased of Lafave, as above stated, to secure a loan then made to him by the defendant. Before taking the chattel mortgage, the defendants examined the records of personal mortgages and liens in the town clerk's office, and found no incumbrance upon the property, and had no actual notice of the contents of the plaintiff's deed.

The mortgage of the personal property by Chevalier to the plaintiff was valid between the parties as a common-law mortgage; but as to subsequent purchasers, it created no lien upon the property. It lacked the formalities requisite under our statute to constitute a valid chattel mortgage as against the defendant. It was not valid as a vendor's lien. The title did not pass from Lafave to Chevalier conditionally, but abso-

lutely. Lafave did not undertake to retain the title when he parted with the possession, but conveyed both to Chevalier, and undertook to make security by way of mortgage back from Chevalier. This cannot be done as against innocent purchasers under our statute relating to vendor's liens. The defendant's mortgage was properly executed to secure a *bona fide* debt, and it must take precedence of the plaintiff's improperly executed one. The plaintiff and defendant are two innocent parties suffering from the default of Chevalier, but the plaintiff and his assignor made possible the contingency that has happened. The defendant's note, secured by her chattel mortgage, had been lost at the time of the trial, but it appeared that the officer making the sale had it at the time of sale, and his computation of the indebtedness secured by the mortgage was based upon it. If Chevalier owed the debt secured by the mortgage, the defendant had the right, under the statute, to seize the property, and sell it. If the note then or since happened to be lost, the seizure is none the less legal.

The judgment is affirmed.

Upon no division of the vexed subject of the rights of vendors, on which are based his remedies against the goods themselves, in sales of personal property, has there been more controversy than in regard to the scope of the seller's lien. English courts, as well as American, have found the greatest difficulty in determining whether the right of the seller to withhold or countermand delivery, in cases of failure to pay the price agreed on, is a right of lien, in the strict sense; or a recission of the contract; or a peculiar privilege which must be classed by itself.

In view of these differences of judicial opinion, the subject of the seller's lien presents elements of special interest to the profession, such as should render especially serviceable a consideration of this topic, based on all the authorities obtainable to date.

The general doctrine, authorizing the remedy, which, however familiar, must be outlined in the first instance, is to the effect that a vendor of chattels has, until delivery, a lien upon them for the price: *Clark* v. *Draper* (1849), 19 N. H. 419, 421; *Parks* v. *Hall* (1824), 2 Pick. (Mass.) 206, 214. [This principle applies, however, only to absolute sales, and not to conditional ones, per WILDE, J., *Barrett* v. *Pritchard* (1824), 2 Pick. (Mass.) 512, 515; in the case of conditional sales, the title to the goods remains in the vendor and the question of lien does not arise: see *Haskins* v. *Warren* (1874), 115 Mass. 514, 533; note to *Rawson M'f'g Co.* v. *Richards* (1887), 27 AMERICAN LAW REGISTER 591.]

[The application of the general right of lien upon undelivered personalty, is not prevented by taking a negotiable promissory note for the price, so long as the note remains in the hands of the vendor, ready for delivery to the vendee on the discharge of the lien: *Milliken*

v. *Warren* (1869), 57 Me. 46, 50; *Arnold* v. *Delano* (1849), 4 Cush. (Mass.) 33, 39. Delivery is the important feature, as it terminates the lien, though the purchase money is still unpaid and secured by a bond: *Beam* v. *Blanton* (1843), 3 Ired. Eq. (N. C.) 59, 62. "The law, in holding that a vendor who has thus given credit for goods, waives his lien for the price, does so on one implied condition, which is, that the vendee shall keep his credit good. If, therefore, before payment, the vendee become bankrupt, or insolvent, and the vendor still retains the custody of the goods, or any part of them, or if the goods are in the hands of a carrier or middleman, on their way to the vendee, and have not yet got into his actual possession, and the vendor, before they do so, can regain his actual possession by a stoppage *in transitu;* then his lien is restored and he may hold the goods as security for the price:" SHAW, C. J., *Arnold* v. *Delano, supra;* cited and followed by MILLER, J., *Thompson* v. *B. & O. R. R. Co.* (1867), 28 Md. 406. "Judges do not ordinarily distinguish between the retainer of goods by a vendor, and their stoppage *in transitu*, on account of the insolvency of the vendee; because these terms refer to the same right, only at different stages of perfection and execution of the contract of sale. If a vendor has a right to stop *in transitu, a fortiori* he has a right of retainer before any transit has commenced:" LOWRIE, C. J., *White* v. *Welsh* (1861), 38 Pa. 396, 420; *Griffiths* v. *Perry* (1859), 1 E. & E. (102 E. C. L.) 680; *M'Ewan* v. *Smith* (1849), 2 H. L. Cas. 309, 328; *Dodsley* v. *Varley* (1840), 12 A. & E. (40 E. C. L. 632.]

Where the goods are to be paid for on delivery, but the vendee refuses to pay for them on the completion of the delivery, the vendor has a lien for the price and may resume possession of the goods: *Palmer* v. *Hand* (1816), 13 Johns. (N. Y.) 434. It is further held in this case, that if during the delivery, or before it is completed, the vendee sells or pledges the goods to a third person, for a valuable consideration, without notice to the original vendor, the lien of the latter will not be affected, but he may recover the goods from the subsequent purchaser or vendee. (See below.)

[The question of delivery being, therefore, vital, the following expressions from a case where stoppage *in transitu* was denied because of delivery on board the consignee's own ship was held to be the end of the *transitus*.

The goods had been sold on credit and the consignee became insolvent before the ship and cargo reached the consignees. Two judges dissented on the question of the *transitus* being complete; that is, in the application of the principles laid down by the majority of the court in these words:]

"Actual delivery, then, I understand, to consist in the giving real possession of the thing sold, to the vendee or his servants, or special agents, who are identified with him in law, and represent him. Constructive delivery is a general term, comprehending all those acts which, although not truly conferring a real possession of the thing sold, have been held, *constructione juris*, equivalent to acts of real delivery. In this sense, constructive delivery includes symbolical delivery, and all those *traditiones fictae*, which have been admitted into the law as sufficient to vest the absolute property in the vendee, and bar the rights of lien and stoppage *in transitu;* such as marking and setting apart the goods as belonging to the vendee, charging him with warehouse rent, &c.": ROGERS, J., *Bolin* v. *Huffnagle* (1828), 1 Rawle (Pa.) 19–20; Winfield's Adjudged Words, 17, 138.

[Where a quantity of pig iron was

piled at the furnace and was pointed out by the seller to the agent of the buyer, for the purpose of constructive delivery, and, for the same purpose, was charged on the seller's books to the buyer, but no actual delivery was made, the seller does not loose his lien, and the buyer becoming insolvent, could direct its shipment to other persons, for the seller's own benefit: *Thompson* v. *B. & O. R.R. Co.* (1867), 28 Md. 396, 407. MILLER, J., in delivering the opinion of the court, said: "The law applicable to such a case as this prayer," for instructions to the jury, "presents, is very clearly and accurately stated by SHAW, C. J., in the case of *Arnold* v. *Delano* (1849), 4 Cush. (Mass.) 33, 38, 39. There is, says he, manifestly a marked distinction between those acts, which, as between vendor and vendee, upon a contract of sale, go to make a constructive delivery and to vest the property in the vendee, and that actual delivery by the vendor to the vendee, which puts an end to the right of the vendor to hold the goods as security for the price:" Id. 406. This is contrary to *Parks* v. *Hall* (1824), 2 Pick. (Mass.) 206, 212, where it was held to be generally immaterial whether the delivery be actual or constructive, and a constructive delivery, *according to the contract of sale*, was held to be sufficient to defeat the lien.]

Hence, in regard to the effect of constructive delivery upon the seller's lien, there is a diversity of statement, and even an apparent conflict of opinion. This is not to be wondered at when due note is taken of the different senses in which the term "delivery" is used in the law of sales, and of the uncertain scope of the distinction between actual and constructive delivery.

["The term *delivery* is used in the law of sales in very different senses. It is used, in turn, to denote transfer of title and transfer of possession; and where the parties have agreed, and the specific articles are appropriated and accepted, then, independently of the statute of frauds, it is often said, there is sufficient delivery to pass the title, although there be no transfer of possession. And this must be so, in order to be consistent with the lien, which remains to the vendor, for the price:" COLT, J., *Morse* v. *Sherman* (1871), 106 Mass. 430, 433, and citations there. Upon this statement of the law, an action for goods bargained and sold was sustained by evidence of a sale, "buyer's option, sixty days," at the Boston Mining and Stock Exchange, of shares of stock then in the possession of the seller and afterwards deposited with a trust company in part payment of the price. "The specific shares were appropriated to the defendants, the price was ascertained, the defendants were entitled to obtain possession of them at any time, upon payment of the balance of the price; the receipt was merely in the nature of a vendor's lien for the price, and the whole transaction was assented to by the defendants; and we are of opinion that this amounted to a transfer of the title, subject simply to the right of the plaintiff to require the trust company to obtain the price before surrendering the possession of the certificates:" C. ALLEN, J., *Frazier* v. *Simmons* (1885), 139 Mass. 531, 535, 536.]

That is, on the one hand, it is said that generally it is immaterial whether the delivery be actual or constructive: *Parks* v. *Hall* and *Arnold* v. *Delano*, *supra*; also, *Mason* v. *Hatton* (1877), 41 Up. Can. Q. B. 610. On the other hand, it has been declared that the lien of the seller always exists until he voluntarily and utterly resigns the possession of the goods sold, and all right to detain them; and that so long as the vendor does not surrender actual possession, his lien remains, although he may have performed acts which amount

to a constructive delivery, so as to pass the title or avoid the Statute of Frauds: *Thompson* v. *R. R. Co., supra.* The latter statement seems more definite and accurate than the former. For the seller's lien includes the right to countermand documents of transfer, as will be presently seen, and this would hardly comport with the former statement of the law, as covering the broadest sense of the term *constructive delivery;* though it might not be requisite that there should be a delivery to the buyer personally, and a delivery to his servant or agent, sometimes called *constructive delivery*, might suffice.

Thus, a delivery to a common carrier, to be by him transported to the buyer, has been held a delivery to the buyer, such as passes the title and divests the seller of his lien, since the carrier is the agent of the buyer and receives the goods for him; *Boyd* v. *Mosely* (1853), 2 Swan. (Tenn.) 661, 663. But, of course, such a delivery would not deprive the seller of his right of *stoppage in transitu.*

Indeed, the rule is, that so long as the vendor has the actual possession of the goods, or as they are in the custody of his agents, and while they are in transit from him to the vendee, he has a right to refuse or countermand the final delivery, if the vendee be in failing circumstances: *White* v. *Welsh* (1861), 38 Pa. 396, 420; *Arnold* v. *Delano* (1849), 4 Cush. (Mass.) 33, 39.

[Where notes are given, before maturity there is no lien; but after the notes have been dishonored, and the goods remain undelivered, the vendor's lien attaches without dissolving the original contract, and the vendees could not recover the value of the goods:] *Valpy* v. *Oakeley* (1851), 16 Ad. & El. N. S. 941, 950.

Hence, this rule applies to a sale on credit, so as to allow a refusal to deliver possession if payment is not made when the credit expires: *Hunter* v. *Talbot* (1844), 3 Smedes & M. (Miss.) 754, 761; nor is the rule changed by the fact that notes have been deposited as collateral security, if no money has been realized from them: *Id.;* and the rule even applies if a third person, upon whose credit the goods ordered were sold, becomes insolvent: *Wanamaker* v. *Yerkes* (1872), 70 Pa. 443, 445. Nor does it matter whether the sale is of specific chattels or an executory contract to supply goods: *Griffiths* v. *Perry* (1859), 1 El. & E. 600; or that the property is identified or designated: *Arnold* v. *Delano* (1849), 4 Cush. (Mass.) 33; *Thompson* v. *Balt, Etc., R. R. Co.* (1867), 28 Md. 396.

[Where the contract was to supply bleaching power in monthly portions, and payment was to be received in cash, fourteen days after each delivery, the insolvency of the purchaser relieved the seller from delivering any more goods, until tender of arrearages and for goods to be presently delivered, and no damages would be allowed for such non-delivery:] *Ex parte Chalmers* (1873), L. R. 8 Ch. App. 289, 291.

Withholding delivery may be the remedy naturally available, where the seller retains the custody of the goods as bailee of the buyer, as under an arrangement to pay warehouse rent: *Grice* v. *Richardson* (1877), L. R. 3 App. Ca. 319.

In many cases the vendor may have given documents of transfer, and then the question arises, can he countermand them?

In England, the vendor may stop the delivery of the goods, under his lien for the price, even if he has given a delivery order for the goods, if such order has not been presented to the warehouseman, or other custodian of the goods, and recognized by him:

M'Ewan v. *Smith* (1849), 2 H. L. Ca. 309; *Griffiths* v. *Perry* (1859), 1 E. & E. 680; *Pooley* v. *Gt. West. Ry. Co.* (1876), 34 L. T. (N. S.) 537.

Like views are held in this country, and the seller's lien is held not to be divested by the endorsement and transfer of a delivery order for unpaid goods still in the possession of the seller's agent: *Southwestern, etc., Co.* v. *Standard* (1869), 44 Mo. 81; [and a sub-purchaser, even holding an order for delivery accepted by the seller, has no greater rights than the original purchaser:] *Southwestern, etc., Co.* v. *Plant* (1870), 45 id. 517. The same has been held of a warehouse order which was countermanded before it was presented to the warehouseman: *Keeler* v. *Goodwin* (1873), 111 Mass. 490, 491, 492; *Ware River R. R. Co.* v. *Vibbard* (1879), 114 id. 447, 454.

A tender of the price, even if not accepted, puts an end to the lien upon the goods sold: *Martindale* v. *Smith* (1841), 1 Q. B. 389, 395, 396. See also *Dempsey* v. *Carson* (Trin. Term, 25 Vic.) 11 Up. Can. C. P. 462, 466.

A partial payment is insufficient to extinguish the lien: *Minzesheimer* v. *Heine* (1855), 4 E. D. Smith (N. Y.) 65, 67; compare, however, *Merchants' Banking Co.* v. *Phœnix B. S. Co.* (1877), L. R. 5 Ch. D. 205: s. c. 22 Eng. 33, 46, where JESSEL, M. R. said, "here it is a case of several payments for several portions of goods, and that, as regards these portions of the goods which have been actually paid for, there is no vendor's lien whatever."

Hence, a partial delivery does not prevent the seller's lien reviving upon the insolvency of the buyer, and attaching to the residue of the property remaining in the seller's custody; and even if the goods have been re-sold, the vendor's lien is in no way affected, unless the seller knew and approved such re-sale: *Hamberger* v. *Rodman* (1880), 9 Daly (N. Y. C. P) 93, 99, per DALY, C. J., citing many authorities.

[Where the purchasers agreed to execute a chattel mortgage, to secure the price of certain hotel carpets, and delivery was made under this agreement, before the execution of the chattel mortgage, the agreement for such mortgage could be enforced in equity and constituted an equitable lien against the purchasers and all claiming under them, except *bona fide* purchasers without notice: but the legal title had passed, and an action of trover against the receiver of the purchasers, for selling the carpets, could not be sustained: *Husted* v. *Ingraham* (1878), 75 N. Y. 251; *Hale* v. *Omaha Nat. Bank* (1876), 64 Id. 555. See also *Alexander* v. *Heriot* (1831), 1 Bail. Eq. (S. C.) 223, 225.

An agreement against a resale until payment of the price, does not give a lien: *Welsh* v. *Parish* (1833), 1 Hill (S. C.) 155, 163. "It is when put in the strongest point of view, only a condition subsequent, constituting a personal undertaking": per JOHNSON, J., Id. 163.

The superiority of vendors' lien on cotton, under the laws of Alabama and Louisiana, over the claims of parties intervening as pledgees, was in question in *Tyree* v. *Sands* (1872), 24 La. An. 363, 364. HOWE, J., said, the vendors "had their lien. They had a right to rely upon it, as upon any other legal protection. There can be no imprudent confidence in trusting one's property to the guardianship of the law. The intervenors, bankers of Mobile, knew the law, and were aware of the possibility of plaintiffs' lien. They might have easily asked if the cotton was paid for; they might have required their money to be used in payment for it:" Id. 366. The lien was sustained.

[Where a mule was purchased at public sale on a credit of nine months,

conditioned upon the purchaser giving approved security, which was not given, the vendor had a lien, which he was not bound to relinquish until the terms of sale had been complied with, and could therefore sue for the price, though the mule had not been delivered to the purchaser: *Wade* v. *Moffett* (1859), 21 Ill. 110].

In short, when goods are sold and there is no stipulation for credit, or time allowed for payment, the vendor has, by the common law, a lien for the price, so that he is not bound to part with the possession of the goods, without being paid for them: *Arnold* v. *Delano* (1849), 4 Cush. (Mass.) 33. But there is no lien for the purchase money of goods, with the possession of which the vendor parts absolutely and unconditionally: *Blackshear* v. *Burke* (1883), 74 Ala. 239, 242. [And no equitable or implied lien, while the vendee retains possession]: *James* v. *Bird's Admr.* (1837), 8 Leigh (Va.) 510. [Therein personalty differs from real estate. "By the Roman law, the vendor could in such a case as this, resort to the property; and so, I think, he may by the civil code of France, notwithstanding article 1583. * * * * All contracts of sale, although positive in their terms, according to these laws, have, it is said, this implied condition: *provided the price is paid.*" But "we were referred to no case, on the argument, and I think the search would be in vain to find one, wherein it has been decided in a court of law or equity in this country, or in England, that, after a sale of personal property and a fair and absolute delivery to the purchaser personally, the vendor can reclaim the property because the consideration has not been paid:" per MARCY, J.], *Lupin et al. Marie & Varet* (1830), 6 Wend. (N. Y.) 77, 82, 83. "The law is well settled, that, when one voluntarily delivers possession of property which is pledged, or upon which a lien exists, without any restriction or qualification, and without insisting upon payment, it is a release or waiver of any security or lien he may have upon such property, for its price:" GARDNER, J., *Wilkie* v. *Day* (1886), 141 Mass. 68, 73, citing *Farlow* v. *Ellis* (1860), 15 Gray (Mass.) 229; *Scudder* v. *Bradbury* (1871), 106 Mass. 422; *Haskins* v. *Warren* (1874), 115 Id. 514; *Upton* v. *Sturbridge Mills* (1873), 111 Id. 446.

The right of lien depends upon the possession (cases, *supra*); and to maintain it, a vendor must have the actual or constructive possession of the goods: *Parks* v. *Hall* (1824), 2 Pick. (Mass.) 206, 212. "To tolerate a lien severed from the possession by any device whatever, would be pregnant with all the mischiefs of colorable ownership; GIBSON, C. J., *Jenkins* v. *Eichelberger* (1835), 4 Watts (Pa.) 123.

The principle that the surrender of the possession is the extinction of the lien, applies especially where the surrender is to a purchaser from the vendor, against whom the lien exists in favor of his factor:" *Gwyn* v. *Richmond, etc., Ry. Co.* (1881), 85 N. C. 429.

[The principle is equally applicable where the property is put in the possession of a brother of the vendor, who is the servant of the vendee. "The property was in the use, and under the complete control and direction of Fuller," the vendee, "and to try to escape the legal consequences of this condition, by showing that the property was in the possession of Fuller's hired servant, as agent or trustee, would be an attempt to evade the provisions of the Statute of Frauds:" HEYDENFELDT, J., *Helm* v. *Dumars* (1853), 3 Cal. 454, 457.]

[The lien also attaches where drillings are delivered from time to time, to be made into sacks, and the manufactured sacks are delivered back to the seller, to hold until payment is made for

the material. But there is no lien while the drillings are in the buyer's possession, for manufacture into sacks; and the buyer could have made a good title upon a re-sale: *Howlett* v. *Flint* (1857), 7 Cal. 264.]

[Where, however, wool was sold at an agreed price by weight, and removed before payment to a warehouse, to be packed and weighed, and, by the usual course of dealing, the buyer would not remove the wool from the warehouse until payment, actual possession was held to have been given as soon as the wool "was weighed and packed; that it was thenceforward at his," the buyer's, "risk, and, if burnt, must have been paid for by him. Consistently with this, however, the plaintiff had, not what is commonly called a lien, determinable on the loss of possession, but a special interest, sometimes, but improperly, called a lien, growing out of his original ownership, independent of the actual possession, and consistent with the property being in the defendant. This he retained in respect of the term agreed on, that the goods should not be removed to their ultimate place of destination before payment. But this lien is consistent, as we have seen, with the possession having passed to the buyer, so that there may have been a delivery to, and actual receipt by him:" DENMAN, C. J.; and the seller was given judgment for the price of the goods notwithstanding the defence that the goods had never been delivered: *Dodsley* v. *Varley* (1840) 12 A. & E. 141.

Questions relating to express reservations of the seller's lien; to the record and notice of such lien; to the effect of sub-sales, and to conduct, estopping the seller from asserting his rights, must be deferred for future discussion.

NATHAN NEWMARK.

San Francisco, Cal.

["The lien of the purchaser, for the price of goods sold, originated with the Roman Law, and afterwards became incorporated into the Common law. It is a right to retain goods sold, until the whole price is paid. A partial payment, therefore, will not operate to destroy the lien of the vendor upon all the goods, but only to diminish it in value; every single portion of the property sold, being covered by a lien for the smallest fraction of the price:" Story, Sales, § 282; *Exparte Chalmers*, L. R. 8 Ch. App. 289.

["The lien at common law, of the vendor of personal property, to secure the payment of the purchase money, is lost by the voluntary and unconditional delivery to the purchaser; but this does not prevent the parties from contracting for a lien which, as between themselves, will be good after delivery:" WAITE, C. J., *Gregory* v. *Morris* (1877), 96 U. S. 619; abstract S. C. 17 AMER. LAW REG. 601.

[There are special provisions, recognizing and enforcing this lien in the statutes of California (Civil Code, ed. 1885, § 3049); Dakota (Comp. Laws, 1887, § 4439); Louisiana (R. Civ. Code, §§ 3227–3231); and Tennessee (Code, 1884, § 2761).] J. B. U.